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10/652,138	08/29/2003	Koichiro Tanaka	8375-006/DVA	1171
27572	7590	09/11/2006	EXAMINER	
HARNESSE, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			FAY, ZOHREH A	
			ART UNIT	PAPER NUMBER
			1618	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 1618

Claims 7-18 are presented for examination.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7-9, 11-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Viegas et al. (U.S. Patent 5,587,175). Viegas et al. teach the use of hyaluronic acid, chondroitin sulfate and hydroxypropyl methyl cellulose in combination with active ingredients such as anti-microbial and anti-inflammatory agents in an ophthalmic formulation for protection of cornea, which can be used in the body cavity or by injection. See the abstract, column 4, lines 56-60, column 6, lines 48-65 and examples of 1, 2 and 5.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10, 14, 15 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viegas et al. (U.S. Patent 5,587,175) in view of Chang (U.S. Patent 6,051,560).

Viegas et al. teach the use of the claimed viscoelastic agents, hyaluronic acid, chondroitin sulfate and hydroxymethyl cellulose in combination with the claimed active ingredients, such as anti-microbials and anti-inflammatory agents for protection of cornea during surgery or trauma. See the abstract, column 4, lines 56-60, column 6, lines 48-65 and examples 1, 2 and 5. The primary reference differs from the claimed invention in the use of the combination of hyaluronic acid and chondroitin sulfate and also preservation against the infection of internal ocular space in a surgical operation. Chang et al. teach that the combination of hyaluronates and chondroitin sulfate has been used to protect cell layers and tissues subject to trauma during ocular surgery such as lens implantation, corneal transplantation and other intraocular surgical

Art Unit: 1618

operations. See column 1, lines 30-35 and claims 1-14. It would have been obvious to a person skilled in the art to combine hyaluronic acid and chondroitin sulfate and use it for protecting tissues during ophthalmic surgery, considering that Chang et al. teach the use of such combination in ophthalmic surgery as old. It would have also been obvious to use the claimed combination for preserving against ocular infection, considering that preserving against infection is an inherent property of anti-microbial agents.

One skilled in the art would have been motivated to combine the teachings of the above references, since one relates to the use of the claimed viscoelastic agents, such as hyaluronates, chondroitin sulfate and hydroxymethyl cellulose individually in combination with the claimed anti-microbial and anti-inflammatory agents for protecting cells during ophthalmic surgery and trauma, and the other relates to the use of the combination of hyaluronates and chondroitin sulfate in the intraocular surgery as old. The preservation of ocular space by the addition of anti-microbial agent is the inherent property of such agents. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 10, 14, 15 and 17-22 are properly rejected under 35 U.S.C. 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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